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BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: Lydia Carmen Castillo 1333 Gough St., Apt. 4H San Francisco, California 94109 Registered Nurse License No. 551843 Public Health Nurse Certification No. 60226 Respondent.	Case No. 2010-575 **ACCUSATION**

Complainant alleges:

PARTIES

1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department of Consumer Affairs.

2. On or about February 9, 1999, the Board of Registered Nursing issued Registered Nurse License No. 551843 to Lydia Carmen (Respondent). The license is inactive and will expire on January 31, 2011, unless it is renewed.

3. On or about February 22, 1999, the Board of Registered Nursing issued Public Health Nurse Certification No. 60226 to Lydia Carmen Castillo (Respondent). The Public Health Nurse Certification is inactive and will expire on January 31, 2011, unless it is renewed.

JURISDICTION

4. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

STATUTORY PROVISIONS

5. Section 2750 of the Business and Professions Code (Code) provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with Section 2750) of the Nursing Practice Act.

6. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under Section 2811(b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

7. Section 2761 of the Code states:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

"(a) Unprofessional conduct, which includes, but is not limited to, the following:

"(1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing functions.

. . .

"(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.

8. Section 2762 of the Code states:

"In addition to other acts constituting unprofessional conduct within the meaning of this chapter, it is unprofessional conduct for a person licensed under this chapter to do any of the following:

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"(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.

"(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

"(c) Be convicted of a criminal offense involving the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a) of this section, in which event the record of the conviction is conclusive evidence thereof.

"(d) Be committed or confined by a court of competent jurisdiction for intemperate use of or addiction to the use of any of the substances described in subdivisions (a) and (b) of this section, in which event the court order of commitment or confinement is prima facie evidence of such commitment or confinement.

"(e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital, patient, or other record pertaining to the substances described in subdivision (a) of this section."

9. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

10. Section 118, subdivision (b), of the Code provides that the suspension/expiration /surrender/cancellation of a license shall not deprive the Board/Registrar/Director of jurisdiction

to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

11. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

12. California Health and Safety Code, section 11173(a), states that no person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact.

13. California Health and Safety Code, section 11190 states in pertinent part that:

(a) Every practitioner, other than a pharmacist, who prescribes or administers a controlled substance classified in Schedule II shall make a record that, as to the transaction, shows all of the following:

(1) The name and address of the patient.

(2) The date.

(3) The character, including the name and strength, and quantity of controlled substances involved.

REGULATORY PROVISIONS

14. California Code of Regulations, Title 16, Section 1444, states:

"A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

. . .

"(c) Theft, dishonesty, fraud, or deceit.

. . .

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15. DRUGS

Morphine Sulfate (MS) is a Schedule II controlled substance as listed in Health and Safety Code Section 11055(b)(1)(m) and is a dangerous drug per Business and Professions Code Section 4022 and is a Schedule II controlled substance as defined by Section 1308.12(b)(1) of Title 21 of the Federal code of Regulations. Morphine, a central nervous system (CNS) depressant, is a systemic narcotic and analgesic used in the management of pain.

Hydromorphone (Dilaudid) is a Schedule II controlled substance pursuant to Health and Safety Code Section 1105(d)(K) and a dangerous drug pursuant to Business and Professions Code section 4022.

Diazepam (Valium) is a Schedule IV controlled substance as listed in Health and Safety Code Section 11057(d) and is a dangerous drug pursuant to Business and Professions Code Section 4022.

Lorazepam is a Schedule IV controlled substance pursuant to Health and Safety Code Section 11057(d) and a dangerous drug pursuant to Business and Professions Code section 4022.

Oxycodone is a Schedule II controlled substance pursuant to Health and Safety Code Section 11055 and a dangerous drug pursuant to Business and Professions Code Section 4022.

Vicodin is the brand name for Hydrocodone with Acetaminophen, an analgesic, and a Schedule III controlled substance pursuant to Business and Professions Code Section 4022.

Percocet is a brand name for Oxycodone Hydrochloride and acetaminophen. It is a narcotic analgesic and a Schedule II controlled substance pursuant to Health and Safety Code section 11055(b)(1)(N).

FACTUAL BACKGROUND

16. During the time period from approximately 2006 to 2009, Respondent was employed as a Registered Nurse in at least four different health care facilities, specifically, the University of California Medical Center; St. Mary's Medical Center; San Francisco General Hospital, located in San Francisco, California; and the Veterans Affairs Hospital located in Palo Alto, California. On or during the time period from 2007 to 2009, the Board of Registered Nursing ("Board") received complaints of Respondent's conduct from each facility as follows:

UNIVERSITY OF CALIFORNIA MEDICAL CENTER

17. On or about February 13, 2007, the Board received a complaint from the Patient Care Manager at the University of California Medical Center l in San Francisco ("UCSF") alleging that, while Respondent worked as an Oncology Nurse at UCSF, she diverted Dilaudid, a Schedule II controlled substance from patients. On or about January 24, 2007, Respondent was placed on investigatory leave after a narcotic activity report revealed an above average use of Dilaudid during a three month period from October 22, 2006 to January 21, 2007. On or about January 29, 2007, Respondent admitted to diverting the Dilaudid and agreed to self report the diversion to the Board. Respondent then entered a detoxification facility for treatment.

a. On or about August 2009, during the course of an interview with Board investigators, Respondent admitted to using drugs while working at UCSF. Further, Respondent admitted that the outpatient treatment she attended as part of her rehabilitation did not work.

ST. MARY'S MEDICAL CENTER

18. On or about November 17, 2007, the Board received a complaint from St. Mary's Medical Center in San Francisco (St. Mary's) alleging that Respondent diverted medications and narcotics from patients while she worked as a per diem nurse at St. Mary's. Alerted by an unusual use of narcotics noted in the hospital's PYXIS report, Supervisory staff at St. Mary's conducted a review of patient charts at the end of Respondent's shift, on or about November 14, 2007, and found evidence of discrepancies including the following:

a. Respondent signed out for 3 narcotics for patients in Unit 8 West within a 30 minute period of time. The drugs were not properly documented in the patient's records. The patients denied pain or receiving paint medications from Respondent.

b. The PYXIS report indicated an excess sign out of narcotics on Unit 8 East. Wastage of drugs was not properly documented. Respondent signed out narcotics for two patients who did not have orders for narcotics.

c. Medications were signed out by Respondent on the Unit 7 West PYXIS during a time frame when she had no patient assignments.

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19. In a subsequent meeting with St. Mary's management, Respondent admitted that she was diverting drugs. A bloody syringe was found in her pocket and returned to St. Mary's management staff. Respondent was placed on administrative leave pending investigation. On or about November 26, 2007, Respondent was terminated from her position at St. Mary's. After Respondent's termination, St. Mary's reported to the Board that Respondent returned to the hospital multiple times to secure narcotics, as follows:

a. On or about November 29, 2007, Respondent removed medications from the cart at Unit 5 West D/P SNF PYXIS machine when she was no longer an employee of St. Mary's.

b. On or about December 1, 2007, Respondent was found on Unit 5 West by St. Mary's nursing staff. Respondent was reported to have been dressed in scrubs and looking for her black bag. Respondent left St. Mary's after being questioned about not having a name tag.

c. On or about December 7, 2007, Respondent was found on Unit 7 West in possession of Dilaudid 2 mg injections and Morphine 10 mg syringes which had been signed out from PYXIS using the ID and password of another nurse employed at St. Mary's.

d. On or about August 2009, during the course of an interview with Board investigators, Respondent admitted that she diverted drugs from St. Mary's.

SAN FRANCISCO GENERAL HOSPITAL

20. On or about December 24, 2007, the Board received a complaint from the Director of Nursing Operations and Surgical Nursing Service at San Francisco General Hospital (SFGH) who reported that Respondent diverted large amounts of controlled substances during the time periods of December 13, 2007; December 14, 2007; December 17, 2007; and December 19, 2007. On or about August 2009, during the course of an interview with Board investigators, Respondent admitted to diverting drugs from SFGH. She stated that she does not remember what or when she diverted but that the records SFGH provided to the Board are probably correct. She stated that working at SFGH was "kind of a blur." Instances of Respondent's diversion activities, recorded in SFGH's Omnicell Remote Access (OCRA) narcotics dispensing reports, are set forth in summary as follows:

a. On or about December 12, 2007, Respondent signed out narcotics, to wit: Morphine, Oxycodone and Lorazepam, in 9 separate OCRA transactions for patients in Unit 5 D. In six instances, Respondent signed out narcotics for patients who were not assigned to her care. In all instances, Respondent failed to chart whether the controlled substance was given to the patient or wasted or otherwise accounted for.

b. On or about December 13-14, 2007, Respondent signed out narcotics, to wit: Morphine, Oxycodone, and Hydromorphone, in 11 separate OCRA transactions for patients in Unit 6 A. In two instances, Respondent signed out narcotics for patients not assigned to her care. In all instances, Respondent failed to chart whether the controlled substance was given to the patient or wasted or otherwise accounted for.

c. On or about December 17, 2007, Respondent signed out narcotics, to wit: Hydromorphone, Vicodin, Lorazepam, and Morphine, in 19 separate OCRA transactions for patients in Unit 5 C. In all instances, Respondent failed to chart whether the narcotic was given to the patient or wasted or otherwise accounted for. Three transactions were done within a short period of time beginning before the patient arrived on the unit.

d. On or about December 19-20, 2007, Respondent signed out narcotics, to wit: Hydromorphone, Percocet, Oxycodone, Morphine and Vicodin, in 16 separate OCRA transactions for patients in Unit 5 D. In fifteen instances, Respondent signed out narcotics for patients who were not assigned to her care. In all instances, Respondent failed to chart whether the controlled substance was given to the patient or wasted or otherwise accounted for.

VETERANS AFFAIRS MEDICAL CENTER

21. On or about August 2009, during the course of an interview with Board investigators, Respondent disclosed that on or about January 27, 2009, while she was employed as a Clinical Nurse Instructor training nursing student at the Veterans Affairs Medical Center ("VA") in Palo Alto, California, Respondent was caught diverting controlled substances from the VA's controlled substance dispensing and tracking system. Respondent was prosecuted in a Federal Court action which was pending on or about the time that the Board's investigators interviewed her.

FIRST CAUSE FOR DISCIPLINE

(Substantially Related Conviction)

22. Respondent's Registered Nurse license and her Public Health Nurse Certification are subject to disciplinary action under sections 490, 2761(f) and 2762(a), (b), (c), (d) and (e) of the Code, in that on or about September 29, 2009, Respondent was convicted on her plea of guilty to the violation of 21 U.S.C., Section 843(a)(3) (possession of a controlled substance by misrepresentation and fraud), a felony, in the indictment entitled *United States of America v. Lydia Carmen Castillo*, United States District Court, Northern District of California, San Jose Division, Case No. CR-09 00508 JW PVT. A plea agreement was executed in open court and Respondent was committed to three (3) years of probation under standard terms and conditions. Respondent was also assessed $100.00 (One Hundred Dollars) as a criminal monetary penalty. The circumstances of the conviction are as follows:

a. On or about January 27, 2009, during which time she was employed as a Clinical Nurse Instructor training nursing student at the Veterans Affairs Medical Center ("VA") in Palo Alto, California, Respondent accessed the ACUDOSE controlled substance dispensing and tracking system used at the VA, with the intent to obtain a controlled substance, to wit: 4mg/1ML vials of Hydromorphone, a Schedule II controlled substance, purportedly on behalf of a patient, but in fact for her own personal use.

b. Respondent's conduct, set forth above in paragraph 22, above, is substantially related to the qualifications, functions and/or duties of a Registered Nurse.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

23. Respondent's license is subject to disciplinary action under sections 2761(a) and 2762(a) of the Code in that by her own admission, Respondent unlawfully prescribed and obtained a controlled substance and dangerous drug, to wit: Hydromorphone, for her own use as set forth in paragraph 22, above.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

24. Respondent's license is subject to disciplinary action under sections 2761(a) and 2762(a) of the Code, for violating Health and Safety Code section 11173(a) in that, by her own admission, Respondent obtained and attempted to obtain controlled substances by fraud and deceit, as set forth in paragraphs 16, 17, 18, 19, 20, 21 and 22, above.

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

25. Respondent's license is subject to disciplinary action under Code Sections 2761(a) and 2761(e), and under Health and Safety Code section 11190, in that, by her own admission, she made false, grossly incorrect, grossly inconsistent entries in patient's records while employed as a Registered Nurse at four different hospitals/health care facilities as set forth in paragraphs 16, 17, 18, 19, 20 and 21, above.

FIFTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

26. Respondent's license is subject to disciplinary action under section 2761(a) and 2762(b) of the Code in that, Respondent, by her own admission, used controlled substances and dangerous drugs, to an extent or in a manner dangerous or injurious to herself, any other person, or the public or to the extent that such use impaired her ability to conduct with safety to the public the practice authorized by her license, as set forth in paragraphs 16, 17, 18, 19, 20, 21 and 22, above.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License No. RN 551843, issued to Lydia Carmen Castillo;

2. Revoking or suspending Public Health Nurse Certification No. 60226, issued to Lydia Carmen Castillo;

3. Ordering Lydia Carmen Castillo to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

4. Taking such other and further action as deemed necessary and proper.

DATED: 5/16/10

Louise R. Bailey

LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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